



Department of Energy

Richland Operations Office
P.O. Box 550
Richland, Washington 99352

99-RU-0103

Mr. Maurice J. Bullock
BNFL Inc.
2940 George Washington Way
Richland, Washington 99352

Dear Mr. Bullock:

EMPLOYEE CONCERNS PROGRAM (ECP) INSPECTION REPORT, IR-98-001

On November 30 through December 4, 1998, the Office of Radiological, Nuclear, and Process Safety Regulation of TWRS-P Contractors (Regulatory Unit) completed an inspection of the ECP at your facility.

The inspectors identified one finding, documented in the Notice of Finding (Enclosure 1), based upon the aggregate of the inspection conclusions detailed in the enclosed report (Enclosure 2). This finding resulted from the inspectors identifying that the ECP was not fully in place and functional. This was contrary to BNFL Inc. letter 5193-97-0169-PM, dated April 4, 1997, which stated that the ECP was to be fully implemented as of October 23, 1998. The lack of a fully implemented ECP is of concern to the Regulatory Unit (RU). However, the inspectors observed that there was an atmosphere of open communication within the project and that the employees felt free to express concerns to management without fear of reprisal. These strengths were mitigating factors in the degree of the RU's concern with the implementation of the ECP.

It is the RU's understanding that BNFL Inc. will be making significant changes in the ECP and implementing procedures to address the RU's concerns identified in this report. Since the ECP Description and Instructions document (BNFL-5193-ECP-01) was one of the six deliverables included in the Standards Approval Regulatory Action, and as such is part of the authorization basis, revisions to this document must follow the process laid out in the Contract for contractor initiated changes to the authorization basis. In accordance with the enclosed Notice of Finding, within 30 days of the date of this letter, we request that BNFL Inc. provide a description of the changes to the ECP, both completed and planned, to address our concerns. In addition, please provide the date you intend to have all of your corrective actions completed and a copy of your revised ECP Description and Instructions document.

Maurice J. Bullock
99-RU-0103

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Nothing in this letter should be construed as changing the Contract (DE-AC06-96RL13308). If you have any questions regarding this inspection, please contact me or Pat Carier of my staff on (509) 376-3574.

Sincerely,

D. Clark Gibbs, Regulatory Official
Office of Radiological, Nuclear and
Process Safety Regulation

RNP:NKH

Enclosures

cc w/enclosures
D. W. Edwards, BNFL

NOTICE OF FINDING

Standard 4, "Safety, Health, and Environmental Program," of Contract DE-AC06-RL13308, dated August 24, 1998, between BNFL Inc. (the contractor) and the Department of Energy, defines the contractor's responsibilities under the Contract as they relate to conventional non-radiological worker safety and health; radiological, nuclear and process safety; and environmental protection.

The Employee Concerns Management System was a Part A Contract deliverable under the Standards Approval Regulatory Action as cited in Table S4-1 of Contract DE-AC06-RL13308. The contractor committed by letter 5193-97-0169-PM, dated April 4, 1997, that the Employee Concerns Program Description and Instructions, BNFL-5193-ECP-01, would be fully implemented within 60 days of the Authorization to Proceed with Phase I Part B. The Regulatory Unit approved BNFL-5193-ECP-01, Revision 0, by letter 97-RU-0145, dated April 28, 1997. The Authorization to Proceed with Phase I Part B occurred on August 24, 1998. Therefore, the Employee Concerns Program was required to be fully implemented by October 23, 1998.

Contrary to the above, the inspectors found during the inspection conducted from November 30 through December 4, 1998, that the Employee Concerns Program was not fully implemented. This finding was based upon the following inspection conclusions. The TWRS-P project employees lacked adequate knowledge of the Employee Concerns Program process. No qualification standards for managers, Employee Concerns Program staff, or concern investigators had been established. There was inadequate procedural guidance on how to handle concerns. There was inadequate procedural guidance on how to administer the program. There was a lack of demonstrated Senior Management support for the Employee Concerns Program.

This is considered an inspection finding.

The Employee Concerns Program Description and Instructions, BNFL-5193-ECP-01, including the commitment for full implementation, is part of the authorization basis. The contractor is requested to provide to the Regulatory Unit within 30 days of the date of the cover letter that transmitted this Notice its corrective actions, both completed and planned, for regaining compliance with the authorization basis. Additionally, in accordance with RL/Reg-97-13, Revision 3, "Regulatory Unit Position on Contractor-Initiated Changes to the Authorization Basis," (which is incorporated in Standard 4 of the Contract) the contractor, shall notify the Regulatory Unit of revisions to BNFL-5193-ECP-01 within 30 days of completing such revisions.

U.S. DEPARTMENT OF ENERGY
Richland Operations Office
Office of Radiological, Nuclear and Process Safety Regulation

REPORT No: IR-98-001

FACILITY: BNFL, Inc.

LOCATION: 2940 George Washington Way
Richland, Washington 99352

DATES: November 30 through December 4, 1998

INSPECTORS: N. Hunemuller (Lead), Senior Regulatory Technical Advisor
C-K Liu, Senior Regulatory Technical Advisor
J. Goeckner, Employee Concerns Coordinator, Concerns
Resolution and Quality Resources Program (CRQ)

APPROVED BY: Pat Carier, Verification and Confirmation Official
Office of Radiological, Nuclear and Process Safety Regulation

EXECUTIVE SUMMARY
Employee Concerns Program Assessment
Regulatory Unit Inspection Report Number IR-98-001

INTRODUCTION

This inspection of the BNFL Inc. (the contractor) Employee Concerns Program (ECP) covered the following six specific areas:

- Procedures and Activities that Implement the ECP (Section 1.2)
- Independence Between the ECP and the Line Organizations (Section 1.3)
- Environment for Reporting Concerns (Section 1.4)
- Protection Against Reprisal (Section 1.5)
- Expertise of ECP Staff (Section 1.6)
- Plans for Self-assessment (Section 1.7)

At the time of this inspection, the contractor had not received any employee concerns. Therefore, areas such as documentation of concerns, corrective actions, prioritization of concerns, and feedback to employees were not addressed during this inspection.

SIGNIFICANT OBSERVATIONS AND CONCLUSIONS

- The atmosphere of open communication within the project was evident and it was apparent that the contractor employees felt free and comfortable to express concerns to management without fear of reprisal. These strengths were mitigating factors in the degree of the following concerns with the Employee Concerns Program. (Section 1.5)
- Employees lacked adequate knowledge of the ECP process. Employees were unaware of BNFL-5193-ECP-01, Revision 0, dated March 18, 1997, "Employee Concerns Program Description and Instructions." Not all employees were notified of the existence and implementation of the ECP (approximately 20% were missed). The notification that most of the employees received was incomplete in that it lacked information about the corporate policy, protection against reprisal, and assurance of confidentiality. (Section 1.4)
- No qualification standards for managers, ECP staff, or concern investigators had been established. Although the ECP Description and Instructions contained responsibilities for these people, no training had been established or conducted to assure that these people could adequately carry out those responsibilities. (Section 1.6)
- There was inadequate procedural guidance on how to handle concerns. The ECP lacked specific implementing guidance, including roles, duties, and responsibilities, for ensuring and maintaining independence from the line organization in which an employee concern may originate; identifying and taking immediate actions for imminent hazards; closing

out employee concerns in a fair and impartial manner; assuring and maintaining confidentiality; and involving people with the appropriate expertise and authority. (Section 1.3)

- There was inadequate implementing guidance on how to administer the program. The ECP lacked specific implementing guidance, including roles, duties and responsibilities, for tracking and trending employee concerns; conducting exit debriefings; subcontractor ECP oversight; and protecting employees from reprisal and redressing reprisal should it occur. (Section 1.2)
- There was a lack of demonstrated Senior Management support for the ECP. Senior Management had made no specific endorsement in the information provided to employees or promoted the ECP in any high profile manner. Although management encouraged openness, management had not specifically encouraged employees to report their concerns through the ECP if the employees were reluctant to go through the normal channels. (Section 1.4)
- Based upon the aggregate of the inspection conclusions, the inspectors found that the ECP was not fully in place and functional. This was contrary to the contractor letter 5193-97-0169-PM, dated April 4, 1997, which stated that the ECP was to be fully implemented as of October 23, 1998. This was considered an inspection finding. (Section 1.8)

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1.0 REPORT DETAILS

1.1 INTRODUCTION

The BNFL Inc. TWRS-P project was in the early design stages (about 5% complete) at the time of this inspection. The contractor (BNFL Inc.) was in the process of hiring the staff needed to continue progress on the design. The contractor had about 75 project employees in Richland in August 1998; at the time of this inspection there were about 240; and the staffing target was 550.

Although the contractor's formal program, BNFL-5193-ECP-01, "Employee Concerns Program Description and Instructions," Revision 0, was dated March 18, 1997, according to the contractor's letter 5193-97-0169-PM, dated April 4, 1997, it was not required to be fully implemented until October 23, 1998. At the time of this inspection, the contractor had not received any employee concerns.

The inspectors reviewed the ECP Description and Instructions and interviewed the ECP staff (three people), three managers, and nine employees. The inspectors also reviewed related documents and information at the contractor's facility. However, the inspectors neither provided nor retained any written material.

1.2 PROCEDURES AND ACTIVITIES THAT IMPLEMENT THE ECP (INSPECTION TECHNICAL PROCEDURE (ITP) I-108)

1.2.1 Inspection Scope

The inspectors assessed the contractor's activities that implement the ECP. The inspectors examined and focused on the information flow process and the contractor's process for receiving, evaluating, dispositioning, tracking, and documenting concerns.

1.2.2 Related Contractor Commitments

In accordance with Section 3.1, "Procedures," of BNFL-5193-ECP-01, Rev. 0, "The procedures developed for the TWRS Privatization Project ECP address (1) the initiation of an employee concern, and (2) the investigation and appropriate corrective action, if any, of an employee concern. Appendix A provides a graphical representation of the employee concern resolution process."

In accordance with Section 3.1.2, "Resolving an Employee Concern," of BNFL-5193-ECP-01, Rev. 0, the investigation of an employee concern is conducted by a concern investigator, who may be a manager, service organization representative, or a subject matter expert. Guidelines for the conduct of investigations were listed in Appendix D of BNFL-5193-ECP-01.

1.2.3 Observations and Assessments

The inspectors assessed whether the ECP included a corporate policy on the ECP. The inspectors reviewed BNFL-5193-ECP-01, Rev. 0, and determined that the corporate policy on the ECP, including the policy against employee reprisal for raising concerns, was stated in this document. However, based upon the interviews, the ECP corporate policy was not disseminated to employees. Further detail on this programmatic element can be found in Section 1.4, "Environment for Reporting Concerns."

The inspectors assessed whether the ECP comprised an effective system for ensuring that information is readily available on how contractor and subcontractor employees can access the ECP. The inspectors reviewed BNFL-5193-ECP-01, Rev. 0, and determined that the ECP was to be made available and was intended for both direct project and subcontractor employees. However, the inspectors found that the ECP did not include implementing guidance that addressed the process by which sub-contractors would implement an ECP, nor the mechanism for overseeing each subcontractor's use of a program.

The inspectors assessed whether the ECP clearly provided methods for reporting concerns. The inspectors verified that the methods for reporting concerns were disseminated to employees as required by BNFL-5193-ECP-01, Rev. 0. Based upon the interviews, the inspectors determined that employees were aware that concerns could be raised to management, the ECP Officer, or the ECP Coordinator, and that employee concern forms were available in the lunchrooms. Further detail on methods for reporting concerns can be found in Section 1.4, "Environment for Reporting Concerns."

The inspectors assessed whether the ECP implemented programmatic elements assuring employee confidentiality as required by BNFL-5193-ECP-01, Rev. 0. Although general guidance was provided, specific implementing guidance was not available. The inspectors reviewed the e-mail notification, the acknowledgement form, and the postings and found that none of these publications mentioned assurance of confidentiality. Most employees interviewed were not aware of the provisions for confidentiality stated in BNFL-5193-ECP-01. Based upon the interviews and documents reviewed, the inspectors determined that the ECP lacked adequate implementation elements assuring employee confidentiality.

The inspectors assessed whether the ECP implemented programmatic elements protecting employees from reprisal. The policy on protection against reprisal was clearly stated in BNFL-5193-ECP-01, Rev. 0, and the document contained references to avenues of appeal for employees who believe they have suffered retaliation. However, the ECP did not include specific implementing guidance for the policy or provisions for protecting employees from reprisal. The inspectors found that the ECP information provided to employees did not address reprisal or avenues of appeal. Based upon the interviews and documents reviewed, the inspectors determined that measures to protect employees from reprisal were not fully implemented. Further detail on reprisal can be found in Section 1.5, "Protection Against Reprisal."

The inspectors assessed whether the ECP implemented programmatic elements ensuring that evaluations of employee concerns were independent from the line organizations in which the

concerns originate. The ECP Description and Instructions directed the ECP staff to assign independent concern investigators. However, the ECP did not include specific implementing guidance for ensuring independence. Based upon interviews with ECP staff and managers and documents reviewed, the inspectors found that there was inadequate procedural guidance in place to ensure independent, fair, and impartial evaluations of employee concerns. Further detail on independence can be found in Section 1.3, “Independence Between the ECP and the Line Organizations.”

The inspectors assessed whether methods for prioritization, evaluation, tracking, resolution, documentation, and feedback regarding employee concerns existed. The ECP Description and Instructions contained provisions addressing these aspects of an employee concerns program. However, the ECP did not contain specific implementing procedural guidance. For example, the ECP Description and Instructions addressed prioritization by identifying three possible categories for an employee concern; however, the ECP did not include guidance or implementing procedures for applying those categories. Part of the first of those categories was that the concern represented “an immediate threat to health, safety, quality, or the environment.” This was also addressed in Section 4.0, “Immediate Action Determination,” of the ECP Description and Instructions. However, there were no specific guidelines or procedures implemented for identifying an immediate threat. Section 4.0 also stated that “evaluations should be performed in conjunction with responsible line management and may involve the Safety Manager, the Environmental Compliance Officer, the legal staff, or the Human Resources Manager, as appropriate.” However, the ECP did not contain guidance or procedures describing when or how to obtain the involvement of people with the appropriate expertise and authority. In addition, based upon observation of a preliminary electronic database, the inspectors determined that no specific tracking system, customized for the ECP, was yet in place. However, the preliminary database could likely be used, if necessary, should an employee concern be reported before a formal ECP database for tracking is established.

1.2.4 Conclusions

The inspectors found that the methods for reporting concerns were clearly stated and that employees were aware of these methods. However, the inspectors also found that there was inadequate procedural implementing guidance on how concerns are handled and how the program is administered. The inspectors found that the corporate policy on the ECP was stated, but was not disseminated to employees. The inspectors found that the ECP was available to both direct project and subcontractor employees, but that the ECP procedure did not identify a subcontractor oversight process. The inspectors found that the ECP lacked adequate programmatic elements assuring employee confidentiality. The inspectors found that measures to protect employees from reprisal were not fully implemented. The inspectors found that there was inadequate procedural guidance in place to ensure independent, fair, and impartial evaluations of employee concerns. The inspectors found that BNFL-5193-ECP-01 contained provisions addressing the aspects of an employee concerns program but the program did not contain specific implementing procedural guidance.

1.3 INDEPENDENCE BETWEEN THE ECP AND THE LINE ORGANIZATIONS (ITP I-108)

1.3.1 Inspection Scope

The inspectors assessed the ability of the ECP staff to impartially process concerns independent of the employee's line organization. The inspectors reviewed the organizational placement and the reporting structure of the ECP staff to determine whether adequate independence between line organizations and the ECP existed. The inspectors assessed the ECP process for investigating employee concerns without influence by line organizations.

1.3.2 Related Contractor Commitments

In accordance with Section 3.1.1 of the ECP Description and Instructions, "Initiating An Employee Concern," the ECP Coordinator or ECP Officer is to "Assign a Concern Investigator who can conduct the investigation and initiate appropriate corrective action, if any, in an independent and objective manner."

In accordance with Section 3.2 of the ECP Description and Instructions, "Employee Concerns Program Officer," the ECP Officer is to "Work with line management to ensure that a Concern Investigator, who can investigate and resolve a concern in an independent, objective manner, is assigned to each concern."

Also in accordance with Section 3.2, "...the ECP Coordinators are to follow a concern through the investigative process and to take appropriate corrective action, if any..."

1.3.3 Observations and Assessments

The ECP staff consisted of an ECP Officer, who was also the Director of Human Resources (HR), an ECP Coordinator, who was also the Quality Assurance (QA) Manager, and a HR Representative, who assisted the ECP Officer and ECP Coordinator in addition to other HR duties. The ECP Coordinator, in the role of the QA Manager, reports to a Director, who reports to the General Manager. However, the ECP Coordinator position reports directly to the ECP Officer. The ECP Officer position reports directly to the General Manager. It should be noted that should a conflict of interest occur with the ECP Officer, the ECP Coordinator would have a direct line to the General Manager. The inspectors found that, organizationally, adequate independence between line organizations and the ECP staff existed.

The ECP had not received any concerns, and therefore, independence of investigations could not be determined based on case reviews. Per the ECP Description and Instructions, concern investigators would be assigned by the ECP Officer to investigate the issue in an independent and objective manner. The ECP representatives stated that a charge code is available for both inside and outside investigative resources for the performance of investigations and that the decision on how to proceed in an independent manner would be determined on a case by case basis. However, no guidance was provided on when and how ECP staff could call upon other sources of expertise.

Although the ECP Description and Instructions contained guidelines for investigators (Appendix

D), ECP representatives and managers acknowledged that no structure or procedures were in place for how to initiate investigations or how to maintain independence from line organizations. Based upon interviews, managers were uninformed with regard to their specific roles, duties, and responsibilities for conducting investigations and maintaining independence from the line organizations in which the concerns originate. There was also no structure identified to ensure that ECP staff would perform a “second” review of investigations assigned to individual organizations, checking for thoroughness, independence, and conflict of interest issues in order to ensure the case is closed in a fair and impartial manner.

The program description did not contain a commitment to maintain independence from supervisors should a concern arise in their area of responsibility. There was no assurance that investigators would be aware of their responsibilities regarding potential conflicts of interest and the ability to maintain independence since there were no qualification or training requirements or criteria identified for investigators (see Section 1.6, “Expertise of ECP Staff”).

1.3.4 Conclusions

The inspectors found that, organizationally, adequate independence between line organizations and the ECP staff existed. However, there were no implementation procedures describing how ECP investigations would be performed in an independent and objective manner. Investigator criteria had not been established and managers were uninformed of their responsibilities regarding investigations. There were no procedures identifying how cases would be closed out in a fair and impartial manner.

1.4 **ENVIRONMENT FOR REPORTING CONCERNS (ITP I-108)**

1.4.1 Inspection Scope

The inspectors assessed if and how the contractor publicizes the ECP as an avenue for employees to report concerns when they are reluctant to report them to their line organization. The inspectors assessed how employees, if they wish to maintain confidentiality, are assured that confidentiality will be preserved. The inspectors evaluated how all employees, including new employees, are made aware of procedures that govern accessibility to, reporting concerns to, and implementation of, the ECP. The inspectors assessed whether departing or dismissed employees are debriefed regarding any concerns they may have.

1.4.2 Related Contractor Commitments

In accordance with Section 2.0, “Policy,” of BNFL-5193-ECP-01, Rev. 0, “if employees are uncomfortable discussing an issue with members of their management chain, this program provides other paths for issue identification (including discussion with other managers within the work group, within company service groups, or at upper levels of management).”

In accordance with Section 3.0, “Employee Concern Program Description,” of BNFL-5193-ECP-01, Rev. 0, “if the employee either believes normal methods have not been effective or does not wish to use normal methods, the employee can go directly to the ECP.”

In accordance with Section 3.1, "Procedures," of BNFL-5193-ECP-01, Rev. 0, "employees can identify an issue they want resolved through the ECP by contacting any manager, their local ECP Coordinator, or the Project ECP Officer in writing or by telephone."

In accordance with Section 3.1, "Procedures," of BNFL-5193-ECP-01, Rev. 0, "an employee may include his/her name with the concern but ask that his/her name be kept in confidence. The employee's desire for confidentiality will be honored unless, in the judgment of senior project management or the Project ECP Officer, keeping this confidence would seriously jeopardize safety, quality, environmental protection, or compliance with laws or DOE regulations. However, before an employee's name is used when confidentiality has been requested and agreed upon, the employee will be notified and the employee's name will only be made available to personnel with a valid need-to-know. If the employee informs the ECP Officer that confidentiality is required regardless of the circumstances surrounding the concern, the ECP Officer shall pursue the issue with the Project legal staff."

In accordance with Section 3.2, "Employee Concerns Program Officer," of BNFL-5193-ECP-01, Rev. 0, the Employee Concerns Program Officer is responsible for taking necessary actions to ensure its success, including informing employees of their rights to raise issues, implementing the administrative controls to support the program, and training managers on implementation of the program. Additionally, the ECP Coordinator is responsible for assisting employees, local line management, and the Project ECP Officer in implementation of the ECP.

1.4.3 Observations and Assessments

The inspectors assessed if and how the contractor publicizes the ECP as an avenue for employees to report concerns when they are reluctant to report them to their line organization. The inspectors verified that there were ECP-related postings and forms in the lunchrooms. The inspectors reviewed the ECP notification that was sent to employees via e-mail. From interviews the inspectors determined that there are Monday morning new starter orientations, which, as of October 26, 1998, included notification of the existence of the ECP. A copy of the ECP posting is handed out at these orientations and employees sign an acknowledgement form. No other training or information was provided to the employees. Neither the e-mail, the acknowledgement form, nor the postings, mentioned independence of the ECP from the line organization in which a concern may originate, protection against reprisal, or assurance of confidentiality. The inspectors noted that the employee concern form itself indicates that the employee's name is optional and that the employee may request confidentiality. Because two of the employees interviewed indicated that they had not received notification of the existence of the ECP, the inspectors compared the e-mail return receipts and signed acknowledgement forms against the "TWRS-P Staff Register," dated November 30, 1998. The inspectors determined that approximately 20% of the employees had not received initial notification of the existence of the ECP.

Based upon the interviews, the inspectors determined that employees were aware that concerns could be raised to management, the ECP Officer, or the ECP Coordinator, and that employee concern forms were available in the lunchrooms. It was also evident to the inspectors that employees believed communications were open. All nine employees interviewed indicated that

they would be comfortable taking issues directly to their management. However, the employees also indicated that they had not been specifically encouraged to report concerns through the ECP if they did not wish to use normal methods. None of the employees interviewed were aware of any specific management endorsement of the ECP.

The inspectors assessed how employees, if they wish to maintain confidentiality, are assured that confidentiality will be preserved. With respect to this issue, the ECP Officer and the ECP Coordinator described the following aspects of the ECP: (1) employees may remain anonymous; (2) there is a need to approach the employee if there is a need to break confidentiality; (3) interviewing the employee away from the work place may protect confidentiality; and (4) ECP records are protected, locked, and kept separate. Most employees interviewed were not aware of any of these assurances of confidentiality.

The inspectors evaluated how all employees, including new employees, are made aware of procedures that govern accessibility to, reporting concerns to, and implementation of, the ECP. Based upon the employee interviews, employees expressed an understanding of the accessibility of the ECP, but they were not aware of the assurances or conditions for confidentiality or the protection against reprisal provided by the ECP. Only one of the employees interviewed was aware of the existence of BNFL-5193-ECP-01, Rev. 0. The inspectors determined that the ECP information provided to employees (discussed above) did not specifically include the policy, purpose and function of the ECP, or procedures governing its operation.

The inspectors assessed whether departing or dismissed employees are debriefed regarding any concerns they may have. The inspectors reviewed a copy of an "Exit Interview Questionnaire" and a copy of a form entitled, "Interviewer's Comment Sheet – Exit Interview." According to the ECP Officer these forms are used in the exit clearance process administered by Human Resources. The inspectors determined that this process is not cited in BNFL-5193-ECP-01, Rev. 0. Also, these forms did not reference the ECP and did not provide for debriefing departing or dismissed employees regarding safety concerns they may have.

1.4.4 Conclusions

Employees lacked adequate knowledge of the ECP process. Most of the employees interviewed were unaware of the ECP document, BNFL-5193-ECP-01, Rev. 0. Not all employees were notified (approximately 20% were missed). There was incomplete notification or publicity of the ECP in that information about protection against reprisal, assurance of confidentiality, and the policy was missing from the e-mail notification, the postings, and the acknowledgement forms.

1.5 PROTECTION AGAINST REPRISAL (ITP I-108)

1.5.1 Inspection Scope

The inspectors reviewed the controls in place to protect contractor employees from reprisal as a result of raising concerns. The inspectors ascertained whether contractor management supported measures to ensure achievement to that end. The inspectors assessed the ECP staff's, project management's, and employees' knowledge of the policy on protection against reprisal and/or retaliation as a result of raising environmental, safety, and health concerns as well as the avenues of appeal available (i.e., 29 CFR 24 and 10 CFR 708).

1.5.2 Related Contractor Commitments

In accordance with Section 2.0 of BNFL-5193-ECP-01, Rev. 0, "Employees are encouraged to report concerns regarding reprisal to their supervisor or the appropriate service organization."

"Freedom of expression cannot co-exist with fear of reprisal," per Section 2.0.

"For the TWRS Privatization project, no employee who identifies a concern will be subjected to any form of reprisal that violates the protected provisions as described in 29 CFR 24." Section 2.0 also states, "Any project employee, including supervisors and managers, who engage in reprisal in response to an employee concern shall be subject to disciplinary action which may include discharge."

Appendix B of BNFL-5193-ECP-01 states, "Employees who believe they have suffered retaliation as a result of raising a safety concern should report the matter to the TWRS Regulator Unit Employee Concerns Coordinator... Following evaluation for the radiological or nuclear safety significance of the concern the employee will be referred to either: [i] the Occupational Safety and Health Administration who investigates such claims for all private industry under 29 CFR 24 or [ii] to the DOE Inspector General for investigation under 10 CFR 708 if the conditions for applicability of that regulation are involved."

1.5.3 Observations and Assessments

Based upon interviews, the inspectors determined that managers and employees were unaware of the policy on protection against reprisal. Although the managers interviewed verbally supported the ECP program and an open work environment, there was evident confusion as to where the ECP process begins and ends. In addition, the process by which managers should address concerns about reprisal was not clearly defined.

The ECP staff sent employees a message by electronic mail supporting the ECP, but the message did not contain any language regarding the avenues of appeal for reprisal. New employees, not notified of the ECP by electronic mail, were provided information in initial orientation training. The inspectors reviewed the initial orientation training materials and found that they did not address avenues of appeal for reprisal. Posters communicating the ECP program were displayed in the facility lunchrooms. However, the posters did not state the policy of protection against reprisal, the avenues of appeal available, or whether or not concerns regarding reprisal could be addressed through the program. None of the employees interviewed were aware of the policy on

protection against reprisal or the avenues available for redress. However, interviews with employees revealed that the work environment was open and that employees felt free and comfortable to express concerns to management without fear of reprisal.

ECP representatives were aware of the policy on protection against reprisal. The ECP Officer was aware of the specific avenues of appeal available to employees who believe they have been reprised against as a result of raising concerns associated with environmental, safety, and health. However, the ECP Coordinator was not aware of the specific provisions available to employees.

1.5.4 Conclusions

The ECP staff was aware of the avenues of redress available to employees alleging reprisal for raising environmental, safety, and health concerns and would likely be able to direct employees to the proper avenues of appeal. However, the policy on protection against reprisal had not been clearly communicated to employees. The initial orientation did not address avenues of appeal available to employees who allege reprisal, and the posters and electronic communications lacked language informing employees of their right to file complaints of reprisal.

Although an open environment for raising concerns was apparent due to the verbal support by management, no evidence could be found to show that Senior Management had demonstrated support of the policy for protection against reprisal.

1.6 **EXPERTISE OF ECP STAFF (ITP I-108)**

1.6.1 Inspection Scope

The inspectors assessed whether the ECP staff could promptly respond to and correctly process a variety of concerns if any concerns should be reported in the future. The inspectors evaluated the likely extent of the ECP staff's reliance on line organizations and consultants to correctly assess the significance of concerns that may be raised. The inspectors determined whether training was provided for all personnel who may be involved in the handling of concerns. The inspectors examined the training of ECP and general facility staff by reviewing ECP-related training records.

1.6.2 Related Contractor Commitments

In accordance with Section 3.1.2 of BNFL-5193-ECP-01, Rev. 0, the investigation of an employee concern may be conducted by a concern investigator, who may be a manager, service organization representative, or a subject matter expert.

In accordance with Section 3.2 of BNFL-5193-ECP-01, Rev. 0, the ECP is directed by the ECP Officer, who is responsible for training managers on implementation of the program. Also, the ECP Coordinator is assigned to the ECP Officer and is to perform various duties, including training employees and management on the ECP.

1.6.3 Observations and Assessments

The inspectors determined, based upon the ECP staff's prior experience, combined with the accessibility of resources and the atmosphere of open communications discussed in the following paragraphs of this section, that the ECP staff probably could promptly respond to and correctly process a variety of concerns if any concerns should be reported in the future. The ECP Officer stated during the interviews that she had experience in handling equal employment opportunity issues, and the ECP Coordinator stated that he had experience in police investigations. Both the ECP Officer and Coordinator demonstrated an understanding of how employee concerns should be handled even though the inspectors also determined that procedural guidance was inadequate (See Section 1.2, "Procedures and Activities that Implement the ECP").

With respect to the likely extent of the ECP staff's reliance on line organizations and consultants to correctly assess the significance of concerns that may be raised, the inspectors observed through interviews with the ECP staff and contractor management that appropriate resources could likely be obtained and would likely be deployed as needed to resolve employee concerns that may be reported. There appeared to be good access to resources through the contractor's partners in the TWRS-P project and through BNFL Parent Liability Corporation (PLC). The inspectors observed through interviews and a review of the "Draft Tank Waste Remediation System Privatization Project Personnel Organization Charts," that the ECP appeared to be placed high enough in the organization to access resources as needed to resolve concerns. Presently, the ECP Officer is the Manager, Human Resources and the ECP Coordinator is the Quality Assurance Manager.

Although interviews with the ECP Officer and the ECP Coordinator indicated that they had relevant background experience, the inspectors determined that specific ECP training was not provided for all personnel who may be involved in the handling of concerns. The inspectors requested the ECP-related training and qualification records for ECP staff. In response, the contractor provided, for inspector review, (1) Procedure Signoff Forms for the ECP Officer, ECP Coordinator, and the assisting Human Resources Representative indicating that these three people had read and understood BNFL-5193-ECP-01, Revision 0, and (2) draft job descriptions for the Human Resources Representative, the Manager, Human Resources, and the Quality Assurance Manager. No specific ECP-related training or qualification requirements were contained in the draft job descriptions. No other training or qualification records were identified. The inspectors confirmed by direct questioning of the ECP Officer that concern investigator qualification standards had not been established. Other than self-study of BNFL-5193-ECP-01, Revision 0, no training on the implementation of the ECP has been developed.

Based upon interviews and review of the training records provided, the inspectors determined that management personnel had not received specific training on the handling of employee concerns. There had been no separate ECP-related qualifications or training requirements established for managers. Although some managers were likely to have pertinent experience, for example, the Project Manager indicated that he had experience with incident investigations, such experience was not compared against any qualification standards. The ECP Officer and Coordinator had apparently discussed the ECP in management meetings; however, the scope of the discussion was indicated to be awareness of the program rather than training on how managers were to perform their ECP-related duties. It was further indicated that Senior Project

Management maintains and encourages a management philosophy that employees should bring up issues freely and openly through normal channels. From employee interviews, the atmosphere of open communication within the project was evident to the inspectors. However, management had not received specific training on how to foster an atmosphere that encourages employees to report their concerns through the ECP if the employees were reluctant to go through the normal channels.

The inspectors observed that there were ECP postings in the lunchrooms. Notification of the existence of the ECP was sent to employees via e-mail. The inspectors reviewed the e-mail message and a list of e-mail return receipts. There were also new employee orientations each Monday morning at which a copy of the ECP posting was distributed and the new employees signed an acknowledgement form. The list of e-mail return receipts and 38 signed acknowledgement forms were provided in response to the inspectors' request for the ECP training records for employees. From the interviews, the inspectors determined that employees had not received any other ECP-related training such as at all-employees meetings or receipt of ECP policies or procedures. As discussed in Section 1.4, "Environment for Reporting Concerns," from a review of the e-mail return receipts and signed acknowledgement forms, the inspectors determined that approximately 20% of the employees had not received initial notification of the existence of the ECP.

1.6.4 Conclusions

The ECP staff probably could promptly respond to and correctly process a variety of concerns if any concerns should be reported in the future. Appropriate resources could likely be obtained and would likely be deployed as needed to resolve employee concerns that may be reported. However, ECP training was not provided for all personnel who may be involved in the handling of concerns. There were no qualification standards for managers, ECP staff, or concern investigators. Personnel who may be involved in the handling of concerns were not trained in how to carry out the responsibilities assigned to them in accordance with BNFL-5193-ECP-01.

1.7 **PLANS FOR SELF-ASSESSMENT (ITP I-108)**

1.7.1 Inspection Scope

The inspectors evaluated the contractor's planned monitoring and auditing of the ECP and whether lessons learned would be provided as feedback to management.

1.7.2 Related Contractor Commitments

In accordance with Section 3.2, "Employee Concerns Program Officer," of BNFL-5193-ECP-01, Rev. 0, the Employee Concerns Program Officer is responsible for conducting a continuing analysis of employee concerns to identify repeat of generic issues.

Also, in accordance with Section 3.2, the Employee Concerns Program Officer is responsible for issuing a quarterly report to the TWRS Privatization Project Manager and DOE-RL Employee Concerns Program Manager summarizing significant ECP issues (maintaining confidentiality),

overall statistical information, and program enhancements.

1.7.3 Observations and Assessments

The inspectors assessed the implementation plans for management and ECP staff oversight of the ECP in terms of monitoring and auditing by internal and independent review organizations. Although neither self-assessment nor lessons learned were cited in BNFL-5193-ECP-01, Rev. 0, Section 3.2 indicated that the Employee Concerns Program Officer was responsible for conducting a continuing analysis and issuing a quarterly report as cited. The ECP Officer indicated that the trigger for such an analysis would be the quarterly report and that the intent was to identify trends of concerns rather than audit the ECP. During the interviews, the ECP staff indicated that self-assessment would be performed under the auspices of QA. The ECP Coordinator indicated that, in addition to audits by the QA organization, the QA program required that all managers audit their programs through self-assessment. The ECP Coordinator expected an initial schedule for QA audits to be issued around mid-December, 1998, and that managers would develop their schedules for self-assessment around mid-January 1999.

1.7.4 Conclusions

The inspectors found that the contractor plans to monitor and audit the ECP under the auspices of the Quality Assurance program. However, no self-assessments had been performed at the time of the inspection.

1.8 ECP PROGRAM ASSESSMENT CONCLUSION

The Employee Concerns Management System was a Part A Contract deliverable under the Standards Approval Regulatory Action as cited in Table S4-1 of Contract DE-AC06-RL13308. The contractor, committed by letter 5193-97-0169-PM, dated April 4, 1997, that the ECP Description and Instructions, BNFL-5193-ECP-01, would be fully implemented within 60 days of the Authorization to Proceed with Phase I Part B. The RU approved BNFL-5193-ECP-01, Revision 0, by letter 97-RU-0145, dated April 28, 1997. The Authorization to Proceed with Phase I Part B occurred on August 24, 1998. Therefore, the ECP was required to be fully implemented by October 23, 1998.

Contrary to the above, the inspectors found during the inspection conducted from November 30 through December 4, 1998, that the ECP was not fully implemented. This finding was based upon the following inspection conclusions. The TWRS-P project employees lacked adequate knowledge of the ECP process. No qualification standards for managers, ECP staff, or concern investigators had been established. There was inadequate procedural guidance on how to handle concerns. There was inadequate procedural guidance on how to administer the program. There was a lack of demonstrated Senior Management support for the ECP. This was considered an inspection finding (IR-98-001-01-FIN).

2.0 EXIT MEETING SUMMARY

The inspectors presented the inspection results to members of contractor management at an exit meeting on December 4, 1998. The contractor acknowledged the observations, conclusions, and finding presented.

During the inspection the inspectors were informed that the ECP would be revised in the near future. The contractor was reminded that the ECP Description and Instructions was one of the six deliverables included in the Standards Approval Regulatory Action, and as such it is part of the Authorization Basis. Therefore, revisions to this document need to follow the process laid out in the Contract for contractor initiated changes to the authorization basis.

The inspectors asked the contractor whether any materials examined during the inspection should be considered proprietary information. The only proprietary information identified had to do with personnel records, and none of that information is contained in this report.

3.0 REPORT BACKGROUND INFORMATION

3.1 PARTIAL LIST OF PERSONS CONTACTED

Ron Barrington, Manager, Project Controls and Administration
 Chris Burrows, Project Manager
 Don Edwards, Manager, Safety and Regulatory Programs
 Jan Hawkins, Manager, Human Resources – Project (ECP Officer)
 Mark Platt, Safety Program Lead (Inspection Liaison)
 Liesl Smith, Human Resources Representative II
 Gale Voyles, Quality Assurance Manager (ECP Coordinator)

3.2 LIST OF DOCUMENTS REVIEWED AT THE CONTRACTOR FACILITY

1. Draft “Tank Waste Remediation System Privatization Project Personnel Organization Charts,” November 16, 1998.
2. Thirty-eight signed TWRS Employee Concerns Program acknowledgement forms and a list of e-mail return receipts for the e-mail notification of the ECP.
3. TWRS-P Staff Register, November 30, 1998.
4. October 23, 1998, e-mail message, “Employee Concern Program” and resent e-mail message of October 26, 1998, with receipt requested.
5. Blank TWRS-P Employee Concerns Program Acknowledgement Form.
6. Employee Concerns Program Poster.

7. Draft “Employee Concerns Program” Brochure.
8. Exit Interview Questionnaire.
9. Interviewer’s Comment Sheet – Exit Interview.
10. Procedure Signoff Forms for Liesl M. Smith, Jan M. Hawkins, and Gale S. Voyles for Procedure, BNFL-5193-ECP-01, Revision 0.
11. Draft Job Descriptions for: (1) Human Resources Representative II, (2) Manager, Human Resources – Project, and (3) Quality Assurance Manager.
12. Corporate Policy Statement – Employee Discipline, Policy No. PS10-01-001, Revision 0, June 22, 1994.

3.3 LIST OF INSPECTION PROCEDURES USED

Inspection Technical Procedure I-108, “Employee Concerns Program Assessment”

3.4 LIST OF ITEMS OPENED, CLOSED, AND DISCUSSED

Opened

IR-98-001-01-FIN Finding ECP not fully implemented

Closed

None

3.5 LIST OF ACRONYMS

BNFL	BNFL Inc.
CFR	Code of Federal Regulations
CRQ	Concerns Resolution and Quality Resources Program
DOE	Department of Energy
ECP	Employee Concerns Program
PLC	Parent Liability Corporation
RL	Richland Operations Office
RU	DOE Regulatory Unit for TWRS-P
TWRS-P	Tank Waste Remediation System Privatization